

Representative Lorie D. Fowlke proposes the following substitute bill:

UNIFORM COLLABORATIVE LAW ACT

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill creates the Utah Uniform Collaborative Law Act.

Highlighted Provisions:

This bill:

- ▶ establishes minimum requirements for collaborative law participation agreements, including written agreements, description of the matter submitted to a collaborative law process, and designation of collaborative lawyers;
- ▶ requires that the collaborative law process be voluntary;
- ▶ specifies when and how a collaborative law process begins and is terminated;
- ▶ creates a stay of proceedings when parties sign a participation agreement to attempt to resolve a matter related to a proceeding pending before a tribunal while allowing the tribunal to ask for periodic status reports;
- ▶ creates an exception to the stay of proceedings for a collaborative law process for emergency orders to protect health, safety, welfare, or interests of a party, a family member, or a dependent;
- ▶ authorizes ~~§~~ → [tribunals] courts ← ~~§~~ to approve settlements arising out of a collaborative law process;
- ▶ codifies the disqualification requirement of collaborative lawyers if a collaborative



26 law process terminates;

27 ▶ defines the scope of the disqualification requirement to both the matter specified in
28 the collaborative law participation agreement and to matters related to the
29 collaborative matter;

30 ▶ extends the disqualification requirement to lawyers in a law firm with which the
31 collaborative lawyer is associated;

32 ▶ requires parties to a collaborative law participation agreement to voluntarily
33 disclose relevant information during the collaborative law process without formal
34 discovery requests and update information previously disclosed that has materially
35 changed;

36 ▶ acknowledges that standards of professional responsibility and child abuse reporting
37 for lawyers and other professionals are not changed by their participation in a
38 collaborative law process;

39 ▶ requires that lawyers disclose and discuss the material risks and benefits of a
40 collaborative law process to help insure parties enter into collaborative law
41 participation agreements with informed consent;

42 ▶ creates an obligation on collaborative lawyers to screen clients for domestic
43 violence and, if present, to participate in a collaborative law process only if the
44 victim consents and the lawyer is reasonably confident that the victim will be safe;
45 and

46 ▶ authorizes parties to reach an agreement on the scope of confidentiality of their
47 collaborative law communications.

48 **Monies Appropriated in this Bill:**

49 None

50 **Other Special Clauses:**

51 None

52 **Utah Code Sections Affected:**

53 ENACTS:

54 **78B-19-101**, Utah Code Annotated 1953

55 **78B-19-102**, Utah Code Annotated 1953

56 **78B-19-103**, Utah Code Annotated 1953

- 57 **78B-19-104**, Utah Code Annotated 1953
- 58 **78B-19-105**, Utah Code Annotated 1953
- 59 **78B-19-106**, Utah Code Annotated 1953
- 60 **78B-19-107**, Utah Code Annotated 1953
- 61 **78B-19-108**, Utah Code Annotated 1953
- 62 **78B-19-109**, Utah Code Annotated 1953
- 63 **78B-19-110**, Utah Code Annotated 1953
- 64 **78B-19-111**, Utah Code Annotated 1953
- 65 **78B-19-112**, Utah Code Annotated 1953
- 66 **78B-19-113**, Utah Code Annotated 1953
- 67 **78B-19-114**, Utah Code Annotated 1953
- 68 **78B-19-115**, Utah Code Annotated 1953
- 69 **78B-19-116**, Utah Code Annotated 1953



71 *Be it enacted by the Legislature of the state of Utah:*

72 Section 1. Section **78B-19-101** is enacted to read:

73 **CHAPTER 19. UTAH UNIFORM COLLABORATIVE LAW ACT**

74 **78B-19-101. Title.**

75 This chapter may be cited as the "Utah Uniform Collaborative Law Act."

76 Section 2. Section **78B-19-102** is enacted to read:

77 **78B-19-102. Definitions.**

78 In this chapter:

79 (1) "Collaborative law communication" means a statement, whether oral or in a record,
80 or verbal or nonverbal, that:

81 (a) is made to conduct, participate in, continue, or reconvene a collaborative law
82 process; and

83 (b) occurs after the parties sign a collaborative law participation agreement and before
84 the collaborative law process is concluded.

85 (2) "Collaborative law participation agreement" means an agreement by persons to
86 participate in a collaborative law process.

87 (3) "Collaborative law process" means a procedure intended to resolve a collaborative

88 matter without intervention by a tribunal in which persons:

89 (a) sign a collaborative law participation agreement; and

90 (b) are represented by collaborative lawyers.

91 (4) "Collaborative lawyer" means a lawyer who represents a party in a collaborative

92 law process.

93 (5) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for

94 resolution described in a collaborative law participation agreement.

95 (6) "Law firm" means:

96 (a) lawyers who practice law together in a partnership, professional corporation, sole
97 proprietorship, limited liability company, or association;

98 (b) lawyers employed in a legal services organization;

99 (c) the legal department of a corporation or other organization; or

100 (d) the legal department of a government or governmental subdivision, agency, or
101 instrumentality.

102 (7) "Nonparty participant" means a person, other than a party and the party's
103 collaborative lawyer, that participates in a collaborative law process.

104 (8) "Party" means a person that signs a collaborative law participation agreement and
105 whose consent is necessary to resolve a collaborative matter.

106 (9) "Person" means an individual, corporation, business trust, estate, trust, partnership,
107 limited liability company, association, joint venture, public corporation, government or
108 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

109 (10) "Proceeding" means:

110 (a) a judicial, administrative, arbitral, or other adjudicative process before a tribunal,
111 including related pre-hearing and post-hearing motions, conferences, and discovery; or

112 (b) a legislative hearing or similar process.

113 (11) "Prospective party" means a person that discusses with a prospective collaborative
114 lawyer the possibility of signing a collaborative law participation agreement.

115 (12) "Record" means information that is inscribed on a tangible medium or that is
116 stored in an electronic or other medium and is retrievable in perceivable form.

117 (13) "Related to a collaborative matter" means involving the same parties, transaction
118 or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

119 (14) "Sign" means, with present intent to authenticate or adopt a record:
120 (a) to execute or adopt a tangible symbol; or
121 (b) to attach to or logically associate with the record an electronic symbol, sound, or
122 process.

123 (15) "Tribunal" means:
124 (a) a court, arbitrator, administrative agency, or other body acting in an adjudicative
125 capacity which, after presentation of evidence or legal argument, has jurisdiction to render a
126 decision affecting a party's interests in a matter; or

127 (b) a legislative body conducting a hearing or similar process.

128 Section 3. Section **78B-19-103** is enacted to read:

129 **78B-19-103. Applicability.**

130 This chapter applies to a collaborative law participation agreement that meets the
131 requirements of Section 78B-19-104 signed on or after May 11, 2010.

132 Section 4. Section **78B-19-104** is enacted to read:

133 **78B-19-104. Collaborative law participation agreement -- Requirements.**

134 (1) A collaborative law participation agreement must:

135 (a) be in a record;

136 (b) be signed by the parties;

137 (c) state the parties' intention to resolve a collaborative matter through a collaborative
138 law process under this chapter;

139 (d) describe the nature and scope of the matter;

140 (e) identify the collaborative lawyer who represents each party in the process; and

141 (f) contain a statement by each collaborative lawyer confirming the lawyer's

142 representation of a party in the collaborative law process.

143 (2) Parties may agree to include in a collaborative law participation agreement
144 additional provisions not inconsistent with this chapter.

145 Section 5. Section **78B-19-105** is enacted to read:

146 **78B-19-105. Beginning and concluding a collaborative law process.**

147 (1) A collaborative law process begins when the parties sign a collaborative law
148 participation agreement.

149 (2) A tribunal may not order a party to participate in a collaborative law process over

150 that party's objection.

151 (3) A collaborative law process is concluded by a:

152 (a) resolution of a collaborative matter as evidenced by a signed record;

153 (b) resolution of a part of the collaborative matter, evidenced by a signed record, in

154 which the parties agree that the remaining parts of the matter will not be resolved in the

155 process; or

156 (c) termination of the process.

157 (4) A collaborative law process terminates:

158 (a) when a party gives notice to other parties in a record that the process is ended; or

159 (b) when a party:

160 (i) begins a proceeding related to a collaborative matter without the agreement of all

161 parties; or

162 (ii) in a pending proceeding related to the matter:

163 (A) initiates a pleading, motion, order to show cause, or request for a conference with

164 the tribunal;

165 (B) requests that the proceeding be put on the tribunal's calendar; or

166 (C) takes similar action requiring notice to be sent to the parties; or

167 (c) except as otherwise provided by Subsection (5), when a party discharges a

168 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

169 (5) A party's collaborative lawyer shall give prompt notice to all other parties of a

170 discharge or withdrawal, in accordance with the Rules of Civil Procedure.

171 (6) A party may terminate a collaborative law process with or without cause.

172 (7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a

173 collaborative law process continues, if not later than 30 days after the date that the notice of the

174 discharge or withdrawal of a collaborative lawyer required by Subsection (4)(c) is sent to the

175 parties:

176 (a) the unrepresented party engages a successor collaborative lawyer; and

177 (b) in a signed record:

178 (i) the parties consent to continue the process by reaffirming the collaborative law

179 participation agreement;

180 (ii) the agreement is amended to identify the successor collaborative lawyer; and

181 (iii) the successor collaborative lawyer confirms the lawyer's representation of a party
182 in the collaborative process.

183 (8) A collaborative law process does not conclude if, with the consent of the parties, a
184 party requests a tribunal to approve a resolution of the collaborative matter or any part thereof
185 as evidenced by a signed record.

186 (9) A collaborative law participation agreement may provide additional methods of
187 concluding a collaborative law process.

188 Section 6. Section **78B-19-106** is enacted to read:

189 **78B-19-106. Proceedings pending before tribunal -- Status report.**

190 (1) Persons in a proceeding pending before a tribunal may sign a collaborative law
191 participation agreement to seek to resolve a collaborative matter related to the proceeding.
192 Parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject
193 to Subsection (3) and Sections 78B-19-107 and 78B-19-108, the filing shall include a request
194 for a stay of the proceeding.

195 (2) Parties shall file promptly with the tribunal notice in a record when a collaborative
196 law process concludes and request the stay to be lifted. The notice may not specify any reason
197 for termination of the process.

198 (3) A tribunal in which a proceeding is stayed under Subsection (1) may require parties
199 and collaborative lawyers to provide a status report on the collaborative law process and the
200 proceeding. A status report may include only information on whether the process is ongoing or
201 concluded. It may not include a report, assessment, evaluation, recommendation, finding, or
202 other communication regarding a collaborative law process or collaborative law matter.

203 (4) A tribunal shall provide parties notice and an opportunity to be heard before
204 dismissing a proceeding in which a notice of collaborative process is filed based on delay or
205 failure to prosecute.

206 Section 7. Section **78B-19-107** is enacted to read:

207 **78B-19-107. Emergency orders.**

208 During a collaborative law process, a ~~§~~→ [tribunal] court ←~~§~~ may issue emergency orders,
208a including
209 protective orders in accordance with Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or
210 Part 2, Child Protective Orders, to protect the health, safety, welfare, or interest of a party or
211 member of a party's household.

212 Section 8. Section **78B-19-108** is enacted to read:

213 **78B-19-108. Approval of agreement by tribunal.**

214 A ~~§~~ → [tribunal] court ← ~~§~~ may approve an agreement resulting from a collaborative law
214a process.

215 Section 9. Section **78B-19-109** is enacted to read:

216 **78B-19-109. Disclosure of information.**

217 Except as provided by law other than this chapter, during the collaborative law process,
218 on the request of another party, a party shall make timely, full, candid, and informal disclosure
219 of information related to the collaborative matter without formal discovery. A party also shall
220 update promptly previously disclosed information that has materially changed. Parties may
221 define the scope of disclosure during the collaborative law process.

222 Section 10. Section **78B-19-110** is enacted to read:

223 **78B-19-110. Standards of professional responsibility and mandatory reporting**
224 **not affected.**

225 This chapter does not affect:

226 (1) the professional responsibility obligations and standards applicable to a lawyer or
227 other licensed professional; or

228 (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation
229 of a child or adult under the law of this state.

230 Section 11. Section **78B-19-111** is enacted to read:

231 **78B-19-111. Appropriateness of collaborative law process.**

232 Before a prospective party signs a collaborative law participation agreement, a
233 prospective collaborative lawyer shall:

234 (1) assess with the prospective party factors the lawyer reasonably believes relate to
235 whether a collaborative law process is appropriate for the prospective party's matter;

236 (2) provide the prospective party with information that the lawyer reasonably believes
237 is sufficient for the party to make an informed decision about the material benefits and risks of
238 a collaborative law process as compared to the material benefits and risks of other reasonably
239 available alternatives for resolving the proposed collaborative matter, such as litigation,
240 mediation, arbitration, or expert evaluation; and

241 (3) advise the prospective party that:

242 (a) after signing an agreement if a party initiates a proceeding or seeks tribunal

243 intervention in a pending proceeding related to the collaborative matter, the collaborative law
244 process terminates;

245 (b) participation in a collaborative law process is voluntary and any party has the right
246 to terminate unilaterally a collaborative law process with or without cause; and

247 (c) the collaborative lawyer and any lawyer in a law firm with which the collaborative
248 lawyer is associated may not appear before a tribunal to represent a party in a proceeding
249 related to the collaborative matter, except as authorized by the Rules of Professional Conduct.

250 Section 12. Section **78B-19-112** is enacted to read:

251 **78B-19-112. Coercive or violent relationship.**

252 (1) Before a prospective party signs a collaborative law participation agreement, a
253 prospective collaborative lawyer shall make reasonable inquiry whether the prospective party
254 has a history of a coercive or violent relationship with another prospective party.

255 (2) Throughout a collaborative law process, a collaborative lawyer reasonably and
256 continuously shall assess whether the party the collaborative lawyer represents has a history of
257 a coercive or violent relationship with another party.

258 (3) If a collaborative lawyer reasonably believes that the party the lawyer represents or
259 the prospective party who consults the lawyer has a history of a coercive or violent relationship
260 with another party or prospective party, the lawyer may not begin or continue a collaborative
261 law process unless:

262 (a) the party or the prospective party requests to begin or to continue a process; and

263 (b) the collaborative lawyer reasonably believes that the safety of the party or
264 prospective party can be protected adequately during a process.

265 Section 13. Section **78B-19-113** is enacted to read:

266 **78B-19-113. Confidentiality of collaborative law communication.**

267 A collaborative law communication is confidential to the extent agreed by the parties in
268 a signed record or as provided by law of this state other than this chapter.

269 Section 14. Section **78B-19-114** is enacted to read:

270 **78B-19-114. Authority of tribunal in case of noncompliance.**

271 (1) If an agreement fails to meet the requirements of Section 78B-19-104, or a lawyer
272 fails to comply with Section 78B-19-111 or 78B-19-112, a tribunal may nonetheless find that
273 the parties intended to enter into a collaborative law participation agreement if they:

274 (a) signed a record indicating an intention to enter into a collaborative law participation
275 agreement; and

276 (b) reasonably believed they were participating in a collaborative law process.

277 (2) If a ~~§~~→ [tribunal] court ←~~§~~ makes the findings specified in Subsection (1), and the
277a interests of

278 justice require, the ~~§~~→ [tribunal] court ←~~§~~ may:

279 (a) enforce an agreement evidenced by a record resulting from the process in which the
280 parties participated;

281 (b) apply the disqualification provisions of Sections 78B-19-105 and 78B-19-106; and

282 (c) apply the privileges in the Utah Rules of Evidence.

283 Section 15. Section **78B-19-115** is enacted to read:

284 **78B-19-115. Uniformity of application and construction.**

285 In applying and construing this uniform act, consideration shall be given to the need to
286 promote uniformity of the law with respect to its subject matter among states that enact it.

287 Section 16. Section **78B-19-116** is enacted to read:

288 **78B-19-116. Relation to Electronic Signatures in Global and National Commerce**
289 **Act.**

290 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
291 Global and National Commerce Act, 15 U.S.C.A. Sec. 7001 et seq. (2009), but does not
292 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C.A. Sec. 7001(c), or authorize
293 electronic delivery of any of the notices described in Sec. 103(b) of that act, 15 U.S.C.A. Sec.
294 7003(b).

H.B. 284 1st Sub. (Buff) - Uniform Collaborative Law Act

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
